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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-814

THOMAS WARNER HOOPES,

Petitioner,

vs.

STATE TAX COMMISSION OF UTAH,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

BRIEF FOR RESPONDENT IN OPPOSITION

VERNON B. ROMNEY
Attorney General
Counsel for Respondent

BRUCE M. HALE
Assistant Attorney General
Of Counsel

236 State Capitol Building
Salt Lake City, Utah 84114

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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. .....

THOMAS WARNER HOOPES,
Petitioner,

vs.

STATE TAX COMMISSION OF UTAH,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF UTAH

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The Decision of the Supreme Court of Utah in this case is reported at 514 P. 2d 221. A copy is appended in Appendix D. The Decision of the United States District Court for the District of Utah, Central Division, is also appended in Appendix C. The Decisions of the Third Judicial District Court, in and for Salt Lake County, State of Utah, are appended, Appendix A and B. No decision was rendered upon the denial of petitioner's Petition for Rehearing of Supreme Court's Decision.

JURISDICTION

Respondent does not question the jurisdiction of this Court.

QUESTIONS PRESENTED

1. Is the issuance and docketing of tax warrants (judgment) by the Utah Tax Commission constitutional?

2. Can the Utah District Court order petitioner into court to testify in supplemental proceedings concerning his property pursuant to its rules of civil procedure in order to enforce tax warrants?

3. Can the Utah District Court hold the defendant in contempt for not answering proper questions concerning his property?

4. Do the taxation statutes of the state of Utah, granting taxpayers a hearing before the Tax Commission and an appeal before the Utah Supreme Court, afford this recalcitrant defendant due process pursuant to the 14th Amendment to the Constitution?

STATEMENT

A tax warrant (judgment) was issued in the State District Court on September 15, 1972, as a result of petitioner's failure to complete his income tax return for the year 1971, or to provide any information to the Tax Commission after several notices and opportunities for hearing. Petitioner represented to the District Court in the November 15, 1972, proceeding that he was acting as his own attorney in response to the court's inquiry.

Petitioner's Motion to Dismiss (on constitutional grounds) was heard and denied in the District Court on November 15, 1972, on the grounds that the court lacked jurisdiction to hear the question of the validity of the warrant, as defendant had not availed himself of Section 59-14-41, Utah Code Annotated (1953), granting exclusive jurisdiction to the Supreme Court of Utah of appeals from the decisions of the Utah State Tax Commission.

In Supplemental Proceedings of November 15, 1972, petitioner was again ordered to answer the proper questions pertaining to his property. Petitioner was granted 10 days to provide respondent with information concerning his assets. Petitioner, before and after being sworn in, invoked the 5th Amendment. The court questioned into the reason for his invoking the 5th Amendment and then instructed petitioner that he was in no danger of criminal prosecution for answering the questions. The court then ordered that he answer the questions or be found in contempt. This order was reduced in writing (Appendix A). He was later found in contempt by a subsequent judge in a later hearing for failure to obey a later order to obey the first order (Appendix B).

On January 2, 1973, petitioner sought an interlocutory injunction on the unconstitutionality of the tax warrant and the underlying state statutes, §59-14-59 and 60, Utah Code Annotated (1953), in the United States District Court for the District of Utah, Central Division, C-369-72. On January 11, 1973, the Honorable Aldon J. Anderson, United States District Judge, issued an order dismissing the complaint and petition of petitioner. Then, citing this court,

he concluded that there was "no substantial constitutional question" and that "the power of administrative agencies under such circumstances has long been established." (See Appendix C.) That decision was never appealed to a higher Federal court.

On August 21, 1973, the Supreme Court of Utah affirmed the contempt charge of the District Court (see Appendix D). The case was appealed to the Utah Supreme Court and a unanimous decision was rendered upholding the statutes and procedures as constitutional. On September 21, 1973, petition for rehearing was denied by the Utah Supreme Court, as no new issues were presented.

On October 12, 1973, Chief Justice E. R. Callister, Jr., issued an order and motion staying execution and enfrocement until appeal was taken to the United States Supreme Court — until December 21, 1973.

The petition was timely filed with the United States Supreme Court.

ARGUMENT

POINT I.

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED AS THE FACTS SHOW THAT THE PETITIONER WAS AFFORDED ALL OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS.

It is respectfully submitted that the petition for writ of certiorari should be denied petitioner. A lengthy discus-

sion will not be presented here by respondent, since the issues raised by petitioner have heretofore been determined many times by this court, the district courts and, correctly, by the Utah Supreme Court.

Petitioner's contention that he was denied due process of law under the taxation statutes of Utah is completely without merit. The validity of such statutes was upheld by the United States District Court for the District of Utah, Central Division, found herein in Appendix C. Respondent also respectfully submits that this court has upheld similar taxation statutes in *Fuentes* v. *Shevin*, 407 U. S. 67 (1972), *Lynch* v. *HFC*, 405 U. S. 538 (1972), and *Phillips* v. *Commissioner*, 283 U. S. 589 (1931).

As was pointed out in the statement, the petitioner was given notice of the proceedings against him. The validity of such notice was again upheld by this court in *Turpin* v. *Lemon*, 187 U. S. 51 (1902).

Petitioner's claim that he was denied the right to counsel is untenable. He chose to represent himself before the court and later obtained counsel to appeal to the Utah Supreme Court.

Petitioner's claim of violation of the 5th Amendment right to remain silent is without merit, not only because this was merely a civil and not a criminal proceeding (*Miranda* v. *Arizona*, 384 U. S. 436, 1966), but also because this court has upheld the right to protect the "legitimate interest of society" (*Couch* v. *U. S.*, 93 S. Ct. 611, 620 (1973)). As an angry taxpayer, the petitioner is not en-

titled to the same rights as a citizen who may los his freedom in a criminal proceeding.

POINT II.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED, IN THE DISCRETION OF THIS COURT, AS IT DOES NOT COMPLY WITH RULE 19 OF THE SUPREME COURT RULES, IN THAT NO SUBSTANTIAL FEDERAL QUESTION EXISTS.

The petitioner did not exhaust his administrative remedies as he failed to appeal the U. S. District Court decision stating that the matter had been heard and decided previously by this court, citing the Utah statutes and the *Coffin Brothers and Company* v. *Bennett* and *Phillips* v. *Commissioner of Internal Revenue* cases. The petitioner further failed to exhaust his administrative remedies in failing to avail himslf of the opportunity for a hearing before the Utah State Tax Commission and an appeal from that decision to the Supreme Court of the state of Utah. The petitioner chose to ignore the procedures set forth in state statutes, and appealing the matter to the Utah State Supreme Court on a contempt issue when he could have appealed the denial of his motions to dismiss in the lower court when that same motion was heard and dismissed by two different judges. Therefore, since the petitioner has more or less intentionally bypassed the proper procedure of the federal

courts and the state courts, it would be improper for this court to grant a writ of certiorari.

It is further improper, as the facts and the issues involved here do not comply with Rule 19 of the Supreme Court Rules. The rule, of course, conditions a review on a writ of certiorari on the sound judicial discretion of this court, and the state contends that there is no special or important reason for the granting of this petition, since the court has already decided the issues in applicable decisions of this court (see the *Fuentes, Shevin, Couch* cases and Appendix E). As pointed out earlier, this court, in those cases, not only demonstrated that the right to due process is not the same in a civil tax proceeding as it is in a criminal miranda situation but also upheld the "legitimate interest of society" in its revenue. Therefore, since the Utah State Supreme Court has decided any federal questions of any possible substances in accordance with the applicable decisions of this court, there being no novel questions nor splits of authority on the issues, the petition for a writ of certiorari should be denied pursuant to Rule 19A of the Supreme Court Rules.

CONCLUSION

Since the petitioner has not exhausted his administrative remedies and has intentionally bypassed those remedies, and also because the petitioner has been granted all of his rights to due process by the U. S. District Courts, the laws and statutes of the state of Utah, the Utah Dis-

trict Court and the Utah Supreme Court, and has not fulfilled the requisites of Rule 19 of this court's rules, the respondent respectfully submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General
Counsel for Respondent

BRUCE M. HALE
Assistant Attorney General
Of Counsel

APPENDIX A

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

STATE TAX COMMISSION OF UTAH,
Plaintiff,

vs.

THOMAS WARNER HOOPES,
Defendant.

ORDER
No. 93-675

The following matters having come on for hearing before the above-entitled court, the Honorable S. Mark Johnson, Judge pro tem, and Bruce M. Hale, Assistant Attorney General of the State of Utah, representing the State Tax Commission, and the defendant representing himself, and having filed a Motion for Dismissal, and the plaintiff having an Order in Supplemental Proceeding properly brought before this Court, arguments having been presented and testimony given that the defendant deposit all of his moneys in the name of a Trust bearing his name, but the defendant not having remembered fully the answers to questions given to him concerning his assets, and the Court being fully apprised in the premises, enter its following Order:

1. The defendant is to provide to the plaintiff's attorney within ten days of receipt of this Order a copy of

the aforementioned Trust Agreement or Indenture, along with its name and address; defendant's Motion is dismissed.

2. The defendant is to provide to the State's attorney a list of all of his accounts receivable as of the 15th day of November; a list of all trust assets, real or personal, and a copy of a statement showing the balance of the mortgage due the First Security Bank on the home located at 2559 Keddingfton Lane, Salt Lake City, Utah.

DATED this 15th day of November, 1972.

S. MARK JOHNSON

District Judge

(SEAL)

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing Order, Civil No. 93-675 to Mr. Thomas W. Hoopes, 2559 Keddington Lane, Salt Lake City, Utah, this 15th day of November, 1972, postage prepaid.

BRUCE M. HALE

APPENDIX B

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

STATE TAX COMMISSION OF UTAH,
Plaintiff,

vs.

THOMAS WARNER HOOPES,
Defendant.

ORDER
No. 93-675

The defendant's Motion to Set Aside the Court's previous Order and Supplemental Order having been called up for hearing before the above-entitled Court on the 13th day of December at the hour of 2:00 o'clock, p.m., and the Utah State Tax Commission having been represented by Mr. Bruce M. Hale, Assistant Attorney General, and the defendant, Mr. Thomas Warner Hoopes being present, and the matter being fully argued, and the Court having read the Memorandums on file, and being fully apprised in the premises, now enters the following Order:

1. That the defendant's Motion to Set Aside Order is denied.

2. That the defendant is ordered to comply with the prior Order of this Court entered on the 15th day of November, 1972, within 10 days in its entirety, or, in the al-

ternative, to pay the judgment herein docketed in full, or to file an appeal to the Supreme Court of the State of Utah within 10 days and file a Supersedeas Bond.

DATED this 14th day of December, 1972.

G. HAL TAYLOR

District Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Order to Mr. Thomas W. Hoopes, 2559 Keddington Lane, Salt Lake City, Utah, this 14th day of December, 1972, postage prepaid.

.....

BRUCE M. HALE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

THOMAS W. HOOPES,
Petitioner,

vs.

STATE TAX COMMISSION OF UTAH, DEAN H. JENSEN, of the State Excise Tax Collection Division of the State Tax Commission of Utah, and DELMAR L. LARSON, Sheriff of Salt Lake County,
Respondents.

C 369-72

ORDER DISMISSING COMPLAINT AND PETITION

Bruce Hale, office of the Attorney General, State of Utah, for respondents State Tax Commission of Utah and Dean H. Jensen.

Merrill K. Davis, office of the Salt Lake County Attorney, for respondent Delmar L. Larson.

Petitioner was represented by himself.

Petitioner seeks an order restraining enforcement of a Warrant for Delinquent Income Tax issued by the State Tax Commission of Utah on the ground that the underlying state statutes, UTAH CODE ANN. §§ 59-14-59 and 59-14-60, are unconstitutional. The constitutional issues

were argued at a January 5, 1972, hearing. The court has studied the pertinent issues and arguments.

Petitioner's central claim appears to be that no administrative agency has the power to levy upon and cause the sale of petitioner's property for the payment of delinquent taxes even though the machinery of the courts is invoked to effect the sale and adequate notice, right to hearing and prior and subsequent judicial review are assured (as they appear to be by Utah law, *e.g.*, UTAH CODE ANN. §§ 59-14-29, 59-14-39 to 42 [respondent is presently exercising his right of judicial review in state court]). The power of administrative agencies under such circumstances has long been established. *See e.g., Coffin Brothers & Company* v. *Bennett*, 277 U. S. 29 (1928). *C.f. e.g., Phillips* v. *Commissioner of Internal Revenue*, 283 U. S. 589 (1931). Petitioner's appurtenant constitutional arguments appear equally inconsistent with the decisions of this nation's courts — which decisions, petitioner's intimations notwithstanding, must bear greater credence than the opinions of private individuals if an orderly and reflective, constitutional society is to endure.

There being no substantial constitutional question at issue, it is unnecessary to convene a three-judge district court purusant to 28 U. S. C. §§ 2281 and 2284. For the same reason,

IT IS ORDERED that petitioner's complaint and petition be and hereby are dismissed.

DATED this 11th day of January, 1973.

ALDON J. ANDERSON
United States District Judge

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE TAX COMMISSION OF UTAH,
Plaintiff and Respondent,
vs.
THOMAS WARNER HOOPES,
Defendant and Appellant.

Nos. 13181 and 13173

ELLETT, Justice:

The defendant appeals from an order of contempt made by the district court in a supplemental proceeding wherein the State Tax Commission was attempting to secure some information regarding the assets belonging to the defendant.

The conduct of the defendant was clearly contumaceous, and he does not contend to the contrary. His defense is based upon the proposition that the state income tax law is unconstitutional.

The defendant made a tax return containing no information. He struck the wording about its being made under the penalty of perjury, signed it, and returned it to the plaintiff. Subsequently, pursuant to law,[1] the plaintiff de-

termined the amount of tax due and mailed a notice of deficiency to the defendant and thereafter a demand for payment. The defendant made no request for a redetermination of the tax[2] and no appeal to this court.[3] He did not pay the tax assessed, and the plaintiff issued a warrant for delinquent taxes, including penalties and interest, in the amount of $2,258.02. Based thereon, the order in supplemental proceedings above referred to was obtained in the district court.

Despite the Eleventh Amendment to the Federal Constitution as interpreted by the case of *Hans* v. *Louisiana*,[4] Mr. Hoopes brought suit in the federal district court wherein he sued the State of Utah through its State Tax Commission[5] to have that court determine that our statute and the procedures outlined therein are unconstitutional. Aside from the question of the jurisdiction of the federal court, the ruling made by the judge there was correct,[6] viz.:

> Petitioner's central claim appears to be that no administrative agency has the power to levy upon and cause a sale of the petitioner's property for the payment of delinquent taxes even though

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[1] Sec. 59-14-58, U. C. A. 1953.

[2] Sec. 59-14-29, U. C. A. 1953.

[3] Sec. 59-14-40, U. C. A. 1953.

[4] 134 U. S. 1 (1889).

[5] *Hoopes* v. *State Tax Commission*, Civil No. 369-72.

[6] *Coffin Bros. & Co., et al.* v. *Bennett*, 277 U. S. 29 (1928); *Phillips* v. *Com.*, 283 U. S. 589 (1931).

> the machinery of the court is invoked to effect the sale and adequate notice, right to hearing and prior and subsequent judicial review are assured (as they appear to be by Utah law; e.g., Utah Code Annotated, Section 59-14-29, 59-14-39 to 42), . . . the power of administrative agencies under such circumstances has long been established.

Our statute[7] provides that the warrant issued by the Tax Commission may be filed with the clerk of the district court and shall have the force and effect of a judgment rendered in said court.

The statute does not deny due process to a recalcitrant taxpayer for the reason that such a one has a right to be heard regarding the determination of his tax[8] and a right to have this court review the ruling of the commission.[9]

Mr. Hoopes refused to avail himself timely of the due process of law afforded by the statute, and the determination of the tax by the commission became final.[10]

Since the statutes and the procedure outlined therein did not deprive Mr. Hoopes of "Due Process of Law" as he claims, he is not entitled to any relief on this appeal. He must answer the proper questions propounded to him regarding his assets or bear the consequence of his contumacy.

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[7] Sec. 59-14-60, U. C. A. 1953.

[8] Secs. 59-14-29 to 31, U. C. A. 1953.

[9] Secs. 59-14-40, U. C. A. 1953.

[10] Sec. 59-14-39, U. C. A. 1953.

The judgment of contempt rendered in the district court is affirmed. No costs are awarded.

WE CONCUR:

.....

E. R. Callister, Jr., Chief Justice

.....

J. Allan Crockett, Justice

.....

R. L. Tuckett, Justice

Henriod, Justice, does not participate herein.

PROOF OF SERVICE

I, Vernon B. Romney, Attorney General of the state of Utah,

HEREBY CERTIFY that on the 18th day of December, 1973, I served three copies of the foregoing Brief for Respondent in Opposition to Mr. Walker E. Anderson, 425 Newhouse Building, Salt Lake City, Utah 84111, Attorney for Petitioner, by depositing same in a United States Mailbox, postage prepaid.

VERNON B. ROMNEY
Attorney General
Salt Lake City, Utah 84114